

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

LAUREL PARK COMMUNITY, LLC, a
Washington limited liability company;
TUMWATER ESTATES INVESTORS, a
California limited partnership;
VELKOMMEN MOBILE PARK, LLC, a
Washington limited liability company; and
MANUFACTURED HOUSING
COMMUNITIES OF WASHINGTON, a
Washington non-profit corporation,

Petitioners,

vs.

CITY OF TUMWATER, a municipal
corporation,

Defendant.

NO. Co9-5312 BHS

**ANSWER OF DEFENDANT CITY
OF TUMWATER**

In answer to the allegations in Plaintiffs' Complaint for Damages filed on May 27, 2009, (hereinafter "Complaint") Defendant City of Tumwater (hereinafter "Tumwater") hereby alleges as follows:

I. ANSWER

A. PARTIES, JURISDICTION, AND VENUE

1 In response to Paragraph 1 of Plaintiffs' Complaint, Tumwater admits that
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Laurel Park participated in proceedings before the Tumwater Planning Commission

**ANSWER OF DEFENDANT
CITY OF TUMWATER**

1 and City Council, but lacks sufficient knowledge concerning the remaining allegations
2 in Paragraph 1 and therefore Tumwater denies the same.

3 2 In response to Paragraph 2 of Plaintiffs' Complaint, Tumwater admits
4 that Tumwater Estates participated in proceedings before the Tumwater Planning
5 Commission and City Council, but lacks sufficient knowledge concerning the remaining
6 allegations in Paragraph 2 and therefore Tumwater denies the same.

7 3. In response to Paragraph 3 of Plaintiffs' Complaint, Tumwater admits
8 that Velkommen Park participated in proceedings before the Tumwater Planning
9 Commission and City Council, but lacks sufficient knowledge concerning the remaining
10 allegations in Paragraph 3 and therefore Tumwater denies the same.

11 4. In response to Paragraph 4 of Plaintiffs' Complaint, Tumwater admits
12 that Manufactured Housing Communities of Washington ("MHCW") participated in
13 proceedings before the Tumwater Planning Commission and City Council, but lacks
14 sufficient knowledge concerning the remaining allegations in Paragraph 4 and therefore
15 Tumwater denies the same.

16 5. In response to Paragraph 5 of Plaintiffs' Complaint, Tumwater admits the
17 same.

18 6. In response to Paragraph 6 of Plaintiffs' Complaint, Tumwater admits the
19 same, except to the extent the defenses pleaded herein are inconsistent.

20 7. In response to Paragraph 7 of Plaintiffs' Complaint, Tumwater admits the
21 same, except to the allegation that Plaintiffs have been injured or Tumwater caused
22 such injury.

23 **B. BACKGROUND FACTS**

24 8. In response to paragraph 8 of Plaintiffs' Complaint, Tumwater admits
25 that it is required to adopt a comprehensive plan under the Growth Management Act.
26 Tumwater admits only that the remaining portions of Paragraph 8 accurately quote a
portion of RCW 36.70A.020, which is not set forth in its entirety.

1 9. In response to paragraph 9 of Plaintiffs' Complaint, Tumwater admits the
2 same.

3 10. In response to paragraph 10 of Plaintiffs' Complaint, Tumwater admits
4 only that a proposal to create a manufactured home park district was referred to the
5 Planning Commission. Tumwater denies the remaining allegations in Paragraph 10 of
6 the Complaint.

7 11. In response to paragraph 11 of Plaintiffs' Complaint, Tumwater admits
8 only that the Planning Commission and General Government Committee considered a
9 memorandum dated January 24, 2008 as part of its consideration of the proposal to
10 create a manufactured home park district. Tumwater denies the remaining allegations
11 in Paragraph 11 of the Complaint.

12 12. In response to paragraph 12 of Plaintiff's Complaint, Tumwater admits
13 only that the planning commission considered a proposed ordinance to amend the
14 Comprehensive Plan to provide for a manufactured home park district in the City. The
15 City further admits that it ultimately adopted Ordinance No. O2008-027, which applies
16 to six properties in the City of Tumwater. Tumwater denies the remaining allegations
17 of Paragraph 12.

18 13. In response to paragraph 13 of Plaintiff's Complaint, Tumwater admits
19 that the provisions of Ordinance 02008-27 apply to Laurel Park, Tumwater Estates and
20 Velkommen Park, and include them within the manufactured home park district.
21 Tumwater denies the remaining allegations of Paragraph 13.

22 14. In response to paragraph 14 of Plaintiffs' Complaint, Tumwater admits
23 the same.

24 15. In response to paragraph 15 of Plaintiffs' Complaint, Tumwater admits
25 the same, except that the date of the Planning Commission hearing was November 25,
26 2008.

1 16. In response to paragraph 16 of Plaintiffs' Complaint, Tumwater admits
2 the same.

3 17. In response to paragraph 17 of Plaintiffs' Complaint, Tumwater admits the
4 same.

5 18. In response to paragraph 18 of Plaintiffs' Complaint, Tumwater denies the
6 same.

7 19. In response to paragraph 19 of Plaintiffs' Complaint, Tumwater admits
8 that the Plaintiffs opposed adoption of Ordinance 02008-027, but denies all remaining
9 allegations in paragraph 19 of the Complaint.

10 20. In response to paragraph 20 of Plaintiffs' Complaint, Tumwater admits
11 the same.

12 21. In response to paragraph 21 of Plaintiffs' Complaint, Tumwater avers that
13 Ordinance 02008-027 speaks for itself and is not completely set forth therein.

14 22. In response to paragraph 22 of Plaintiffs' Complaint , Tumwater denies
15 the same.

16 23. In response to paragraph 23 of Plaintiffs' Complaint, Tumwater avers that
17 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
18 extent that Paragraph 23 makes factual allegations, Tumwater denies the same.

19 24. In response to paragraph 24 of Plaintiffs' Complaint, Tumwater avers that
20 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
21 extent that Paragraph 24 makes factual allegations, Tumwater denies the same.

22 25. In response to paragraph 25 of Plaintiffs' Complaint, Tumwater avers that
23 Ordinance 02008-009 speaks for itself and is not completely set forth therein. To the
24 extent that Paragraph 25 makes factual allegations, Tumwater denies the same, except
25 to the extent Plaintiffs admit they have economically viable and reasonable use of their
26 properties.

1 26. In response to paragraph 26 of Plaintiffs' Complaint, Tumwater admits
2 the same.

3 **C. CLAIMS FOR RELIEF**

4 First Cause of Action – Due Process Violation

5 27. In response to paragraph 27 of Plaintiffs' Complaint, Tumwater
6 incorporates its responses to paragraphs 1-26 above and incorporate the same as
7 though fully set forth herein.

8 28. In response to paragraph 28 of Plaintiffs' Complaint, Tumwater avers that
9 the Due Process Clause of the Fourteenth Amendment to the United States Constitution
10 speaks for itself and admits only that portions thereof are correctly quoted by
11 paragraph 28 of the Complaint.

12 29. In response to paragraph 29 of Plaintiffs' Complaint, Tumwater denies
13 the same.

14 30. In response to paragraph 30 of Plaintiffs' Complaint, Tumwater lacks
15 sufficient knowledge to determine the truth of the allegations therein and therefore
16 denies the same.

17 31. In response to paragraph 31 of Plaintiffs' Complaint, Tumwater denies the
18 same.

19 Second Cause of Action – Equal Protection

20 32. In response to paragraph 32 of Plaintiffs' Complaint, Tumwater
21 incorporates its responses to paragraphs 1-31 above and incorporate the same as though
22 fully set forth herein.

23 33. In response to paragraph 33 of Plaintiffs' Complaint, Tumwater avers that
24 the Equal Protection Clause of the Fourteenth Amendment to the United States
25 Constitution speaks for itself and denies that it is accurately quoted by paragraph 33 of
26 the Complaint. Paragraph 33 sets forth legal conclusions to which no response is
required.

1 34. In response to paragraph 34 of Plaintiffs' Complaint, Tumwater denies the
2 same.

3 35. In response to paragraph 35 of Plaintiffs' Complaint, Tumwater denies the
4 same.

5 36. In response to paragraph 36 of Plaintiffs' Complaint, Tumwater denies
6 the same.

7 Third Cause of Action – Regulatory Taking

8 37. In response to paragraph 37 of Plaintiffs' Complaint, Tumwater
9 incorporates its responses to paragraphs 1-36 above and incorporate the same as
10 though fully set forth herein.

11 38. In response to paragraph 38 of Plaintiffs' Complaint, Tumwater avers that
12 the Takings Clause of the Fifth Amendment to the United States Constitution speaks for
13 itself and admits only that portions thereof are correctly quoted by paragraph 38 of the
14 Complaint.

15 39. In response to paragraph 39 of Plaintiffs' Complaint, Tumwater denies
16 the same.

17 40. In response to paragraph 40 of Plaintiffs' Complaint, Tumwater denies
18 the same.

19 Fourth Cause of Action – Civil Rights Violation

20 41. In response to paragraph 41 of Plaintiffs' Complaint, Tumwater
21 incorporates its responses to paragraphs 1-40 above and incorporate the same as
22 though fully set forth herein.

23 42. In response to paragraph 42 of Plaintiffs' Complaint, Tumwater denies
24 that Plaintiffs are entitled to any damages pursuant to the United States Constitution or
25 42 U.S.C. §1983 as a result of the City's enactment of the Mobile Home Park District.

26 43. In response to paragraph 43 of Plaintiffs' Complaint, Tumwater denies the
same.

Fifth Cause of Action – State Inverse Condemnation /Eminent Domain

44. In response to paragraph 44 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-43 above and incorporate the same as though fully set forth herein.

45. In response to paragraph 45 of Plaintiffs' Complaint, Tumwater avers that Article I, Section 16 of the Washington Constitution and RCW 36.70A.020(6) speak for themselves and admit only that portions thereof are correctly quoted by paragraph 45 of the Complaint.

46. In response to paragraph 46 of Plaintiffs' Complaint, Tumwater denies the same.

47. In response to paragraph 47 of Plaintiffs' Complaint, Tumwater denies the same.

48. In response to paragraph 48 of Plaintiffs' Complaint, Tumwater denies the same.

Sixth Cause of Action – State Due Process

49. In response to paragraph 49 of Plaintiffs' Complaint, Tumwater incorporates its responses to paragraphs 1-48 above and incorporate the same as though fully set forth herein.

50. In response to paragraph 50 of Plaintiffs' Complaint, Tumwater avers that Article I, Section 3 of the Washington Constitution speaks for itself and admits only that portions thereof are correctly quoted by paragraph 50 of the Complaint.

51. In response to paragraph 51 of Plaintiffs' Complaint, Tumwater denies the same.

52. In response to paragraph 52 of Plaintiffs' Complaint, Tumwater denies the same.

53. In response to paragraph 53 of Plaintiffs' Complaint, Tumwater denies the same.

1 54. In response to paragraph 54 of Plaintiffs' Complaint, Tumwater denies the
2 same.

3 Seventh Cause of Action – State Equal Protection Violation

4 55. In response to paragraph 55 of Plaintiffs' Complaint, Tumwater
5 incorporates its responses to paragraphs 1-54 above and incorporate the same as
6 though fully set forth herein.

7 56. In response to paragraph 56 of Plaintiffs' Complaint, Tumwater avers that
8 Article I, Section 12 of the Washington Constitution speaks for itself and admits only
9 that portions thereof are correctly quoted by paragraph 50 of the Complaint.

10 57. In response to paragraph 57 of Plaintiffs' Complaint, Tumwater denies the
11 same.

12 58. In response to paragraph 58 of Plaintiffs' Complaint, Tumwater denies
13 the same.

14 59. In response to paragraph 59 of Plaintiffs' Complaint, Tumwater denies the
15 same.

16 **II. AFFIRMATIVE DEFENSES**

17 1. Plaintiffs' Complaint fails to state a claim upon which relief can be
18 granted.

19 2. Plaintiffs lack standing.

20 3. Plaintiffs' claims are not ripe.

21 4. Plaintiffs' claims are barred by Plaintiffs' failure to exhaust administrative
22 remedies.

23 5. Plaintiffs' claims are not timely raised and are barred by the applicable
24 statute of limitations.

25 6. Plaintiffs' claims are barred by plaintiffs' failure to file a notice of claim
26 for damages.

